

**Submission concerning the 3rd Cycle of Universal Periodic Review of
Indonesia**

Submitted by the Asian Legal Resource Centre

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The Asian Legal Resource Centre (ALRC) works towards the radical rethinking & fundamental redesigning of justice institutions in Asia, to ensure relief and redress for victims of human rights violations, as per Common Article 2 of the International Conventions. Sister organisation to the Asian Human Rights Commission, the ALRC is based in Hong Kong & holds general consultative status with the Economic & Social Council of the United Nations.



ASIAN LEGAL RESOURCE CENTRE

INTRODUCTION

The Asian Legal Resource Centre (ALRC) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Indonesia. In the second cycle of the UPR in 2012, in total, the Republic of Indonesia received 180 recommendations, out of which the Delegation was able to accept 144 during the Working Groups session. The remaining 36 recommendations needed further consultation with relevant stakeholders in Indonesia. After consultation, the government accepted six of the recommendations as well.¹

Criminal justice system and normative legal framework

Revision of the Penal Code: Addressing torture and capital punishment

1. Torture is still a serious problem in Indonesia. In the past four years, most torture committed by police officers related to obtaining confessions from suspects in custody. The Asian Human Rights Commission (AHRC), the ALRC's sister organization, documented and reported various torture cases occurring in police custody. In 2013 for instance, Mr. Aslin Zalim was forced to confess and tortured to death in the custody of Bau Bau Police Resort (Polres Bau Bau),² South East Sulawesi Province. In 2014, Mr. Oki Saputra, a suspect of motorcycle theft, was tortured for confession in police custody.³ In 2015, police officers of the Widang Police Sector (Polsek Widang), Tuban Regency, East Java Province, tortured Fiki Arfindo (13) to confess. Further, in 2016, Mr. Siyono, a terrorist suspect, was forced to confess and tortured to death by the Anti-Terror Police Unit (Densus 88).⁴ Similarly, Mr. Juprianto⁵ and Marianus Oki were both tortured to death to obtain confessions in police custody.⁶ In all of these cases, the police have made little progress in investigation. The few cases that have been prosecuted have resulted in light punishment, with no remedy for victims or their families.
2. The revision of the Indonesian Penal Code (KUHP) has not yet finished. The drafting committee has only finished the first chapter of the new penal code, which is still problematic in relation to serious crimes,⁷ including torture. The new bill does not regulate a high standard of law enforcement, and punishment against torture is limited to the punishment of torture as regulated under article 1 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), overlooking Article 16 of the Convention.⁸ If the drafting committee fails to broaden the definition of torture as regulated under Article 16, prosecution against torture will be very difficult to implement.
3. The drafting committee of the new penal code has also included the death penalty as a punishment. Article 67 of the new bill states, "the death penalty is a cardinal criminal sanction that has a special nature and is always invoked as an alternative". According to the drafting committee, "Compared to other criminal sentences, the death sentence is the harshest sentence possible. Thus, it always has to be treated as an alternative to other criminal sentences, namely life imprisonment or a maximum 20 years imprisonment."⁹ In other words, if the death penalty stands alone, legal action seeking clemency must be sought, whereas, if the death penalty is an alternative punishment, the accused cannot be executed insofar as they meet certain requirements. However, there is no clear definition and boundary when the death sentence will change to be the alternative, how to determine the criteria, and how to ensure there is no unfair practice in trial.

¹ All recommendations are cited using paragraph references from the Report of the Working Group on the Universal Periodic Review: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement>

² See case of Aslin Zalim in the annexure

³ See case of Oki Saputra in the annexure

⁴ See case of Siyono in the annexure

⁵ See case of Juprianto in the annexure

⁶ See case of Marianus Oki in the annexur

⁷ The open letter available at <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-010-2015?searchterm=open+letter+on+the+indonesian+penal+code+serious+crimes>

⁸ See Article 16 of CAT: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

⁹ <http://icjr.or.id/data/wp-content/uploads/2016/03/Envisioning-Indonesian-Penal-Code-Reform.pdf>

4. While Indonesia accepted recommendations under its last UPR, stating that “the death sentence is regarded as the last resort which is imposed selectively only for serious crimes, and the execution can only be carried out after all legal measures are exhausted,” since 2013, Indonesia has executed 19 people, most of them drug dealers.¹⁰

Impunity

1. In the past four years, the investigation of past human rights abuses has not seen any significant progress. Seven cases of past abuses remain in the Attorney General’s Office (AGO) since the National Commission on Human Rights (Komnas HAM) submitted its investigation into these cases, between 2003 and 2008. The cases consist of students shooting in Trisakti University and Semanggi (between 1998 and 1999), enforced disappearances of student activists (1997-1998), Talangsari massacre in Lampung (1989), Tragedy of 13-15 May 1998, Mysterious shootings (1981-1983), Wasior and Wamena case in Papua (2001 and 2003), as well as the 1965-1966 massacre. In addition, the government, through its previous Coordinator Minister of Politics, Law, and Security (Menkopolkam), Mr. Luhut Binsar Panjaitan, stated that the government would not apologize to victims of the 1965-1966 massacres.
2. Under current President Joko Widodo, the government has not made any serious effort to solve these cases. In particular, although the Parliament issued a recommendation to the President to establish an ad hoc human rights court for the case of enforce disappearances against student activists, the recommendation has never been followed up by the President. On the contrary, President Widodo appointed Retired Army General Wiranto as Cabinet Minister of Politics, Law, and Security (Menkopolkam). An individual with such a dubious human rights record should be prosecuted for his actions, rather than given a seat in government.¹¹

Serious gap in promotion and protection of human rights

Freedom of expression, peaceful assembly and opinion

1. Despite Indonesia having ratified key international human rights instruments which guarantee the right to freedom of expression and peaceful assembly, these rights continue to be violated. Moreover, Indonesia has no effective mechanism to prosecute and punish such violations. State officers have no guidelines on how to protect these rights and to ensure their behavior is not in violation of such rights.
2. In many cases, State agencies fabricate cases against those expressing their opinion. In October 2015, for instance, the police assaulted and forcibly dispersed a peaceful demonstration organized by labor and various civil society elements in front of the Presidential Palace. The police kicked, beat, and illegally arrested the protesters, and up until now no investigation has been conducted into police actions. On the contrary, 23 labor activists, two public lawyers, and one university student involved in the demonstration are being prosecuted and tried in the Central Jakarta district court.¹² Assault and forced dissolution of a peaceful protest also occurred in Manado, where police officers along with local parliament staff and civil service police units attacked and forcibly dispersed a peaceful protest organized by students, injuring many of the students in the process.¹³ In Papua, the ALRC also documented and reported serious threats to peaceful assembly and association. On 5 April 2016, around 12 protesters were taken into police custody after they held a public protest in Mimika, Papua, and, on May 2, about 2,300 indigenous Papuans who took part in a peaceful protest in Jayapura and other cities in Papua were arrested. Though many of them have been released, the arrests caused considerable public fear and trauma.¹⁴ Further, on 15 July 2016, indigenous Papuan students faced serious discrimination and ill-treatment by thugs and mass organizations. The police failed to ensure protection for those blockaded in the student dormitory.¹⁵
3. Moreover, police brutality also occurred in the mining area, where police officers and Military personnel assaulted local indigenous persons fighting for land rights and environmental health. The killing has resulted in only light punishment, and no remedy for victims or families of victims.¹⁶ In the last four years, the government has failed to develop effective mechanisms to address various

¹⁰ See the implementation of the death penalty in Indonesia, in the annexure

¹¹ See indictment of Wiranto available at <http://etan.org/etanpdf/pdf2/wirantoindict.pdf>

¹² See the case of brutal attack during peaceful protest in the annexure

¹³ See the case of attacking peaceful protestors in Manado in the annexure

¹⁴ See the arrest of Indigenous Papuans in the annexure

¹⁵ See the case of violence and discrimination against indigenous Papuan students

¹⁶ See the mining coal case in the annexure

problems occurring over land and natural resources. A lack of protection and acknowledgement regarding customary land and indigenous people are the primary causes of human rights violations in this area.

Situation of human rights defenders on the ground

1. The government has shown its unwillingness to continue with the drafting of the human rights defenders protection bill. In fact, the government and the Parliament have dropped the bill from the national legislation program list. Human rights defenders and activists, meanwhile, continue to face serious threats such as torture, murder, enforced disappearance, and other abuse. In the last four years, most of the human rights defenders working on land rights, anti-corruption, legal aid, and on advocating human rights policy have faced abuse.
2. It is the State apparatus and law enforcement agencies that have mostly conducted assaults and threats against right defenders. In some instances, the State apparatus directly attacked rights defenders; the murder of Mr. Jopi Teguh Lasmana Peranginangin (39), an environmental activist, is case in point.¹⁷ In other instances, the State has supported thugs and mobs that have attacked rights defenders, such as in the murder of land rights activist Salim Kancil.¹⁸ The police play a double role here: on one hand they receive complaints and reports of harassment submitted by right defenders, and on the other, the police commit violations against rights activists. These violations range from the murder of land rights activist Indra Pelani,¹⁹ to criminal charges against human rights lawyer Erwin Natosmal Oemar, who criticized the police,²⁰ and Haris Azhar, who published information regarding allegations of high ranking police officers and military personnel involved in the drug trade.²¹

RECOMMENDATIONS

Revision of the Penal Code regarding torture and capital punishment:

- The Parliament must ensure that punishment against torture and other cruel, inhuman, or degrading treatment or punishment is adequately incorporated into the new penal code bill.
- The drafting committee must re-consider the death penalty provision in the new penal code bill; despite the death penalty being applied as alternative punishment, which can be changed to life imprisonment, there is no clear parameter for when the death penalty can be changed to life imprisonment.
- The government should abolish the death penalty in the old penal code and the new draft bill, and without undue delay ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Freedom of expression, peaceful assembly, and opinion:

- The government should respect and ensure protection of the right to freedom of expression, peaceful assembly, and opinion.
- The government should also ensure legal accountability and punishment against anyone violating this right.

Human rights defenders

- The government should ensure that its regulations guarantee and protect human rights defenders without any discrimination.
- The government should enact a special law on the protection of human rights defenders.

¹⁷ See the murder of Jopi Teguh Lesmana in the annexure

¹⁸ See the Salim Kancil case in the annexure

¹⁹ See the Indra Pelani case in the annexure

²⁰ See the case of Erwin Natosmal Oemar in the annexure

²¹ See the case of Haris Azhar in the annexure

